

1927

## c 114 Absconding Debtors' Act

Ontario

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## CHAPTER 114.

## The Absconding Debtors' Act.

Interpreta-  
tion.  
"Property."

**1.** In this Act, 'property' shall include credits and effects.  
R.S.O. 1914, c. 82, s. 2.

Who to be  
regarded as  
an absconding  
debtor.

**2.**—(1) If a person resident in Ontario departs therefrom with intent to defraud his creditors or any of them, or to avoid being arrested or served with process, being then possessed of any real or personal property therein not exempt by law from seizure under execution, he shall be deemed an absconding debtor, and such property may be seized and taken by an order of attachment for the satisfying of his debts.

Order.

When may be  
made.

(2) The order shall not be made except in a pending action.  
R.S.O. 1914, c. 82, s. 3.

## PROCEDURE TO OBTAIN ATTACHMENT.

Affidavit.

**3.**—(1) Upon affidavit made by a plaintiff or his agent that a defendant is indebted to the plaintiff in a sum exceeding \$100, stating the cause of action, and that the deponent has good reason to believe and does believe that such defendant has departed from Ontario and has gone to some place, stating it, to which he is believed to have fled, or that the deponent is unable to obtain any information as to the place to which he has gone, with intent to defraud his creditors or any of them, or to avoid being arrested or served with process, and was, at the time of his so departing, possessed to his own use and benefit of real or personal property in Ontario not exempt by law from seizure under execution, and upon the further affidavit of two other persons that they are well acquainted with such defendant and have good reason to believe and do believe that he has departed from Ontario with intent to defraud his creditors or any of them, or to avoid being arrested or served with process, a judge of the Supreme Court or of a county court may make an order in the Supreme Court for the attachment of the property of such defendant.

Order of  
attachment.

Cases within  
county court  
jurisdiction.

(2) Where the sum claimed is within the jurisdiction of the county court a judge thereof may in like manner make an order of attachment in that court. R.S.O. 1914, c. 82, s. 4.

**4.** A copy of the order shall be served upon the defendant. Service of order.  
R.S.O. 1914, c. 82, s. 5.

**5.** The order shall remain in force for six months. Term of validity.  
1914, c. 82, s. 6.

**6.** The plaintiff may at any time while the order is in force obtain from the proper officer one or more certified copies thereof, which may be delivered to any sheriff other than the sheriff to whom the original order was delivered, and he may thereunder attach the property of the defendant in his bailiwick. Certified copies of order.  
R.S.O. 1914, c. 82, s. 7.

#### WHAT PROPERTY MAY BE ATTACHED—INVENTORY, ETC.

**7.** All the property of an absconding debtor liable to seizure under execution may be attached in the same manner as it might be seized under execution; and the sheriff to whom the order of attachment is directed shall forthwith take into his charge all such property, according to the exigency of the order, and shall be allowed all necessary disbursements for keeping the same, and he shall immediately call to his assistance two substantial freeholders of his county, and with their aid shall make a just and true inventory of all the personal property, evidence of title or debts, books of account, vouchers and papers that he has attached, and shall return such inventory signed by himself and such freeholders, together with the order. Liability of property to attachment. Duty of sheriff.  
R.S.O. 1914, c. 82, s. 8.

*[For property exempt from execution and attachment see The Execution Act, Rev. Stat. c. 112 and The Wages Act, Rev. Stat. c. 176.]*

#### PERISHABLE PROPERTY.

**8.**—(1) Where horses, cattle, sheep or pigs, or perishable property, or such as from its nature cannot be safely kept or conveniently taken care of, are taken under an order of attachment, the sheriff who attaches the same shall have them appraised, on oath, by two competent persons; and, if the plaintiff desires it and deposits with the sheriff a bond to the defendant executed by two freeholders, approved as sufficient by the sheriff, in double the appraised value of the property, conditioned for the payment of the appraised value to the defendant, his executors or administrators, together with all costs and damages incurred by the seizure and sale thereof, in case judgment is not obtained by the plaintiff against the defendant, then the sheriff shall proceed to sell all or any of such property at public auction to the highest bidder, giving not less than six days' notice of the sale, unless any of the property is of such a nature as not to allow of that delay, in which case the sheriff may sell it forthwith; Sale of perishable goods on plaintiff giving security.

Application of proceeds. and the sheriff shall hold the proceeds for the same purposes as he would hold property seized under the order of attachment.

Restoration. (2) If the plaintiff, after notice to him or to his solicitor of the seizure of any property mentioned in subsection 1, does not deposit such bond, then, after four days next after the notice, the sheriff shall be relieved from all liability to the plaintiff in respect to the property so seized, and the sheriff shall forthwith restore the same to the person from whose possession it was taken. R.S.O. 1914, c. 82, s. 9.

#### WHEN DIVISION COURT ATTACHMENT SUPERSEDED.

Proceedings if sheriff finds property in the hands of a bailiff or clerk of a division court. Rev. Stat. c. 95.

9.—(1) Where the sheriff finds any property, or the proceeds of any property which has been sold as perishable, belonging to the defendant in the custody of a constable or of a bailiff or clerk of a division court under a warrant of attachment issued, or finds money paid into court under a garnishee summons under *The Division Courts Act*, the sheriff shall demand and be entitled to receive the same from the constable, bailiff or clerk, who, on demand and notice of the order of attachment, shall forthwith deliver the same to the sheriff, under the penalty of forfeiting double the value thereof, to be recovered by the sheriff, with costs of suit, and to be by him accounted for after deducting his own costs, as part of the property of the defendant; but the creditor who has sued out the warrant of attachment or taken the garnishee proceedings in the division court may proceed to judgment, and on obtaining judgment, and serving a certificate of the amount thereof, and of the costs, under the hand of the clerk and the seal of the division court, shall be entitled to share in the distribution, if any, by the sheriff under *The Creditors Relief Act*.

Rights of division court creditor.

Rev. Stat. c. 113.

Costs of bailiff or constable.

(2) The costs and disbursements of such constable or bailiff shall be a first charge upon such property and proceeds and shall be paid by the sheriff upon demand after being taxed by the clerk of the division court. R.S.O. 1914, c. 82, s. 10.

#### SHERIFF'S COSTS.

Sheriff's costs and how paid.

10. The costs of the sheriff for seizing and taking charge of property, under an order of attachment, including the sums paid to persons for assisting in taking an inventory, and for appraising shall be paid in the first instance by the plaintiff, and when paid shall be taxed to him as disbursements in the action. R.S.O. 1914, c. 82, s. 11; 1919, c. 25, s. 11.

Cost of inventory.

11. Where the sheriff has made an inventory and appraisal on the first order of attachment he shall not be required to make nor shall he be allowed for a new inventory and appraisal upon a subsequent order coming into his hands. R.S.O. 1914, c. 82, s. 12.



## RESTORATION OR SALE OF PROPERTY.

**12.**—(1) Where the defendant or any person on his behalf executes and files in the office from which the order of attachment, or the first order if there are more than one, was issued, a bond to the sheriff with at least two sufficient sureties approved by the proper officer in such office or by the local judge or master, binding the obligors jointly and severally in double the appraised value of the property attached, conditioned that the defendant (naming him) will whenever required by order of the court or a judge pay into court the appraised value of the property or so much thereof as will be sufficient to satisfy the claims of all creditors who may be entitled to share in the proceeds of the property, or will produce and deliver to the sheriff the property attached, the court or a judge may direct that such property be restored to the debtor.

Restoration of goods to debtor on his giving security.

(2) If, within one month after the property has been attached, such bond is not executed and filed the court or a judge may direct the sheriff to sell any of the goods and chattels which have been attached, except chattels real, upon such terms as to the court or judge may seem just. R.S.O. 1914, c. 82, s. 13.

Proceedings on default.

## COSTS OF FIRST ATTACHMENT.

**13.** The costs of the first order of attachment and of the execution thereof shall have priority over all execution debts and other costs. R.S.O. 1914, c. 82, s. 14.

Costs of first attachment.

[As to sales of shares, etc., in Companies, see sections 11 to 16 of The Execution Act, Rev. Stat. c. 112.]

## ATTACHMENT OF DEBTS DUE TO ABSCONDING DEBTOR.

**14.**—(1) Where notice in writing of the order of attachment has been duly served by the sheriff, or by or on behalf of the plaintiff, upon a person owing a debt or demand to, or who has the custody or possession of property of the defendant, and such person after such notice pays the debt or demand or delivers the property to the defendant or to any one for him, he shall be deemed to have done so fraudulently, and if the other property seized by the sheriff is insufficient to satisfy the claims of all creditors who are or become entitled to be paid out of the same or the proceeds thereof, such person shall be liable to the sheriff for the amount of the debt or demand so paid or for the property so delivered or the value thereof.

Liability of persons paying debts to absconding debtor after notice of attachment.

(2) The sheriff shall not be bound to sue until a bond is given by one or more of the plaintiffs or claimants with two sufficient sureties, who may be other of the plaintiffs or claimants, payable to the sheriff by his name of office in double

Duty of sheriff.

the amount of the debt or of the value of the property sued for, conditioned to indemnify him from all costs, loss and expense which he may incur in the prosecution of the action or to which he may become liable in consequence thereof.

Stay of proceedings taken by absconding debtor.

(3) If, after the notice mentioned in subsection 1, a person indebted to the defendant, or having the custody or possession of any of his property, is sued for the debt, demand or property by the defendant, or by the person to whom he has assigned the debt, demand or property since the date of the order of attachment, he may, on affidavit, apply to the court or a judge to stay proceedings in the action until it is known whether the other property seized by the sheriff is sufficient to satisfy the claims mentioned in subsection 1, and the court or judge may direct an issue to try any disputed question of fact or make such other order as may seem just. R.S.O. 1914, c. 82, s. 15.

Sale of debts by sheriff.

Rev. Stat. c. 113.

**15.** If the other property of the defendant proves insufficient to satisfy the executions against him and the claims certified under *The Creditors Relief Act*, and there remain debts due to the defendant, the attempt to collect which would be less beneficial to his creditors than a sale thereof, the sheriff may, by leave of the court or a judge, sell such debts by public auction after such advertisement as the court or judge may direct and, pending such advertisement, the sheriff shall keep a list of the debts to be sold open for inspection at his office, and shall give free access to all documents and vouchers explanatory of such debts; but every debt amounting to more than \$100 shall be sold separately, unless the court or judge shall otherwise direct. R.S.O. 1914, c. 82, s. 16.

[See section 5 of *The Creditors Relief Act*, Rev. Stat. c. 113.]

Right of purchaser to sue.

**16.**—(1) The person who purchases a debt from the sheriff may sue for it in his own name, and a bill of sale, Form 1, executed by the sheriff, shall be *prima facie* evidence of such purchase and of the sheriff's authority to sell without proof of the handwriting of the sheriff, or of the execution or order, or of the sale.

What defence may be set up.

(2) In an action by the purchaser the defendant may set up any defence which would have availed him against the absconding debtor at the date of the order of attachment. R.S.O. 1914, c. 82, s. 17.

#### PROCEEDINGS UNDER CREDITORS RELIEF ACT.

Option of proceeding under Rev. Stat. c. 113.

**17.** Where the plaintiff desires to avail himself of the provisions of *The Creditors Relief Act* he may, instead of proceeding with his action, obtain a certificate; and, in that case, may add the costs incurred in the action to the amount of his claim, unless the court or a judge otherwise orders. R.S.O. 1914, c. 82, s. 18.

## DELIVERY UP OF PROPERTY.

**18.** Where an order of attachment has been made but no execution at the suit of any creditor against the property of the debtor is placed in the sheriff's hands for execution within three months thereafter or within such further time as the court or judge may direct, all the property of the absconding debtor, or unappropriated money the proceeds of any part of such property remaining in the sheriff's hands, together with all books of account, evidences of title, or of debt, vouchers and papers whatsoever belonging thereto, shall be delivered to the absconding debtor or to his authorized agent, or to the person in whose custody the same were found, or, if taken or received under section 9, to the constable, bailiff or clerk from whom the same were taken or received, upon being repaid the amount, if any, which the sheriff may have paid under the provisions of subsection 2 of section 9, and thereupon the responsibility of the sheriff in respect thereto shall determine, or, if a bond has been given under the provisions of section 12, the bond shall be delivered up to be cancelled. R.S.O. 1914, c. 82, s. 19.

Sheriff's duty  
and end of  
his responsi-  
bility.

## FORM 1.

## BILL OF SALE OF A DEBT.

(Section 16.)

In consideration of \$ \_\_\_\_\_, the receipt whereof I hereby acknowledge:

I, A. B., Sheriff of the County of \_\_\_\_\_, under and by virtue of an order of attachment dated \_\_\_\_\_, issued under *The Absconding Debtors Act*, against the real and personal property of C. D., an absconding debtor, and under and by virtue of an order in that behalf, hereby sell and assign to E. F., all claim by the said C. D., against G. H., of (*describing the debtor*), with the evidences of debt and the securities thereto appertaining.

Witness my hand and seal of office, this \_\_\_\_\_ day of \_\_\_\_\_ 19

A. B.,  
Sheriff of the County of \_\_\_\_\_

R.S.O. 1914, c. 82, Form 1.